

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of State (State) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the records that Plaintiff seeks.

STATEMENT OF FACTS

Sondland Communications FOIA

7. On September 25, 2019, American Oversight submitted a FOIA request to State, seeking:

- (1) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between

(1) Rudolph Giuliani, Sam Kislin, Victoria Toensing, Joseph diGenova and
(2) the U.S. Ambassador to the European Union, Gordon Sondland.

- (2) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the U.S. Ambassador to the European Union, Gordon Sondland, regarding (1) any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden.

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

8. American Oversight requested expedited processing of this request.
9. On information and belief, Ambassador Sondland has sent responsive communications during the relevant time period using text messages or similar messaging applications.
10. By letter dated October 8, 2019, State acknowledged receipt of this request, granted expedited processing of the request, and assigned the request tracking number F-2020-00224.
11. American Oversight has not received any further communications from State concerning this request.
- Sondland Calendars FOIA*
12. On September 25, 2019, American Oversight submitted a FOIA request to State seeking:

All calendars or calendar entries [FN omitted] U.S. Ambassador to the European Union Gordon Sondland, including any calendars maintained on his behalf (e.g., by an administrative assistant) for the date range provided below.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how Ambassador Sondland allocates his time on agency business.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

13. American Oversight requested expedited processing of this request.

14. By letter dated October 8, 2019, State acknowledged receipt of this request, granted expedited processing of the request, and assigned the request tracking number F-2020-00226.

15. American Oversight has received no further communications from State concerning this request.

Sondland Text Message FOIA

16. On October 8, 2019, American Oversight submitted a FOIA request to State seeking:

All text messages (including messages on messaging applications similar in form to text messages, such as Signal, WhatsApp, Facebook Messenger, Twitter DMs, etc.) of U.S. Ambassador to the European Union Gordon Sondland. [FN omitted]

A search for responsive records should include, at a minimum, a search of any communications devices and messaging platforms used by Ambassador Sondland, including those used on a temporary basis for foreign travel as well as any personal, non-governmental, or non-official devices or messaging accounts used in the course of conducting official agency business. [FN omitted]

To be clear, American Oversight requests all text messages of Ambassador Sondland that concern agency business without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any text messages sent or received by Ambassador Sondland.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

17. American Oversight requested expedited processing of this request.
18. By letter dated October 17, 2019, State acknowledged receipt of this request, granted expedited processing of the request, and assigned the request tracking number F-2020-00592.
19. American Oversight has received no further communications from State concerning this request.

Sondland Key Terms FOIA

20. On September 25, 2019, American Oversight submitted a FOIA request to State seeking:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by U.S. Ambassador to the European Union Gordon Sondland containing any of the following key terms: [FN omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Toensing
- vii. diGenova
- viii. Kislin
- ix. Hunter
- x. Biden
- xi. Parnas
- xii. Fruman

- xiii. Kolomoisky
- xiv. Klitschko
- xv. Burisma
- xvi. Shokin
- xvii. Lutsenko
- xviii. Zelensky
- xix. Zelenskyy
- xx. Zelenskiy
- xxi. Yermak
- xxii. Bakanov
- xxiii. “Ukraine Security Assistance Initiative”
- xxiv. USAI

American Oversight has limited its request to ~~sent~~ messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if Ambassador Sondland sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

- 21. American Oversight requested expedited processing of this request.
- 22. By letter dated October 8, 2019, State acknowledged receipt of this request, granted expedited processing of the request, and assigned the request tracking number F-2020-00225.
- 23. American Oversight has received no further communications from State concerning this request.

Exhaustion of Administrative Remedies

- 24. As of the date of this complaint, Defendant has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records Defendant intends to produce or withhold and the reasons for any

withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

25. Through Defendant's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

26. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

27. Plaintiff properly requested records within the possession, custody, and control of Defendant.

28. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

29. Defendant has failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

30. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

31. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

32. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

33. Plaintiff properly requested records within the possession, custody, and control of Defendant.

34. Defendant is an agency subject to FOIA and must therefore release in response to FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

35. Defendant is wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to its FOIA requests.

36. Defendant is wrongfully withholding non-exempt agency records requested by Plaintiff by failing to segregate exempt information in otherwise non-exempt records responsive to its FOIA requests.

37. Defendant's failure to provide all non-exempt responsive records violates FOIA.

38. Plaintiff is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiff's FOIA requests;

- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiff's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
- (4) Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 8, 2019

Respectfully submitted,

/s/ Daniel A. McGrath

Daniel A. McGrath

D.C. Bar No. 1531723

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

/s/ John E. Bies

John E. Bies

D.C. Bar No. 483730

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 897-4213

daniel.mcgrath@americanoversight.org

sara.creighton@americanoversight.org

john.bies@americanoversight.org

Counsel for Plaintiff